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BOARD OF FORESTRY

BEFORE THE CALIFORNIA BOARD OF FORESTRY

IN THE MATTER OF ROSEBURG
RESOURCES CO.'S APPEAL OF THE
CALIFORNIA DEPARTMENT OF
FORESTRY AND FIRE PROTECTION'S
DISAPPROVAL OF TIMBER
HARVESTING PLAN NO. 2-06-106-SHA (4)

} THP No. 2-06-106-SHA (4)

} **CALIFORNIA DEPARTMENT OF
FORESTRY AND FIRE PROTECTION'S
RESPONSE BRIEF TO ROSEBURG
RESOURCES COMPANY'S APPELLATE
BRIEF**

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I. INTRODUCTION

This appeal revolves around a single issue: the potential for a timber harvest plan "THP" to cause significant adverse impacts to viewsheds adjacent to a state park and interstate highway. The THP submitter, Roseburg Resources Company "Roseburg" contends that the THP as submitted will not cause adverse visual impacts. Based upon substantial evidence in the administrative record "AR", the California Department of Forestry and Fire Protection "CAL FIRE" respectfully disagreed and disapproved the THP.

On August 2, 2007, CAL FIRE sent Roseburg a notice that the THP known as the "Blacktail" THP (2-06-106/SHA (4).) was not approved. CAL FIRE denied the plan because the THP did not conform to the rules of the California Board of Forestry and Fire Protection "Board." (AR at 543.) The Blacktail THP did not conform to the Board's rules because, as submitted, the THP failed to mitigate a potentially significant environmental effect; visual impacts to views from an adjacent state park, Castle Crags State Park, and from Interstate Highway 5. During the eleven month review process for the Blacktail THP CAL FIRE consistently recommended a change in silvicultural method, or harvesting method, for one specified unit of harvest in order to mitigate the identified significant impact to views. (AR at 543.) This recommendation was again provided in the letter of denial. This appeal resulted.

In its brief contesting the denial of the THP, Roseburg contends that the THP is in conformance with the rules of the Board in that it does not create significant visual impacts. This contention finds no support in the Administrative Record. In fact, Roseburg's own visual analysis performed at CAL FIRE's request, demonstrates the significant visual impact of the unit if it were to be clear cut. The Forest Practice Rules "FPRs" require the Director of CAL FIRE to disapprove "all plans which: (1) do not incorporate feasible silvicultural systems, operating methods and procedures that will substantially lessen significant adverse impacts on the

1 environment.” (FPR 898.1(c).) Here, the THP contained seven clear cut units within direct view
2 from Castle Crags State Park and Interstate 5. Through the THP review process, Roseburg
3 agreed to mitigate impacts from six of the seven units. However, Roseburg refused to mitigate
4 the impact from the seventh unit even though its own visual analysis demonstrated that the
5 seventh unit, Unit 102, the unit closest and most visible to the park, would have significant visual
6 impacts without further screening or a change in silvicultural method. This failure to mitigate a
7 potentially significant visual impact required the Director disapprove the THP.
8

9
10 On the eve of the hearing date for Roseburg’s appeal, December 6, 2007, CAL FIRE was
11 informed that Roseburg intended to submit a videotape which was prepared after the letter
12 conveying CAL FIRE’s disapproval of the THP had been sent to Roseburg. The videotape is
13 extrinsic evidence which meets none of the limited evidentiary exceptions to the California Code
14 of Civil Procedure §1094.5 as interpreted by the California Supreme Court in Western States
15 Petroleum Association v. Superior Court (1995) 9 Cal.4th 559. Therefore, CAL FIRE objects to
16 the inclusion of this videotape for any purpose. “Demonstrative evidence” is just that –
17 “evidence” and is inadmissible when the Board’s own rule explicitly limits the review to the
18 administrative record. By its own admission, Roseburg had eleven months to prepare video
19 evidence to submit into the administrative record. As the tape was not available to CAL FIRE
20 prior to its disapproval of the Blacktail THP, the tape is irrelevant to the proceeding before the
21 Board.
22
23

24 25 **II. STATEMENT OF FACTS**

26 CAL FIRE received the Blacktail THP on September 8, 2006. (AR at 1.) The maps
27 attached to the THP clearly demonstrate the proximity of the THP to Interstate 5 and Castle
28 Crags State Park. (AR at 59-83.) Curiously, the THP plan description omitted any mention of

1 the State Park or Interstate 5, identifying only the town of Castella, approximately .03 air miles
2 from the THP boundary. (AR at 85.) Nor did Roseburg consult State Parks personnel in
3 preparation of its cumulative impacts analysis, prior to concluding that visual impacts will not be
4 significant after mitigation. (AR at 104-107.)

5
6 The THP concluded that, with vegetative screening, no units are visible in their entirety.
7 (AR at 137.) However, the THP acknowledged that Unit 102 rates “high” in its probability to
8 change the existing visual setting. (AR at 139.) In its discussion of “outreach” to the community
9 to discuss potential visual impacts, the THP does not list any contact with Castle Crags State
10 Park on its outside agency contact list, although the THP explicitly acknowledged that the
11 primary visual impacts will be to visitors and hikers on trails within the park. (AR at 140-141.)
12 The THP then concluded that Unit 102 “will not be highly visible from the State Park nor from
13 I-5” (AR at 142.) Finally, after several additional review team requests, the THP increased its
14 mitigation in Unit 102 to leave approximately 2 individual leave trees per visible acre throughout
15 the unit and retention of three black oak trees to screen 19 acres of proposed clear cut. The THP
16 also proposed to configure portions of the boundary of the unit with irregular edges to “blend”
17 into the surrounding landscape. (AR at 144.)

18
19
20 The THP concluded its analysis of visual impacts by stating that a timber production zone
21 “TPZ” is “by definition extremely visually and temporally dynamic” and “short in duration.”
22 The THP then stated that a perception that an adverse visual impact will occur is primarily due to
23 public misperception. (AR at 147.) The THP contended that Roseburg’s statutory requirement
24 to harvest at a maximum sustainable level supersedes temporary visual effects. (AR at 147.)
25 Finally, the THP stated:

26
27
28 “There is no regulatory basis in the authorizing law surrounding the operation
of the PCT [Pacific Crest Trail] that allows State agencies or trail clubs to

1 impose their own concept of forestry onto privately owned timberlands and
2 silvicultural practices occurring a mile away. Visual impacts from timber
3 harvest are subjective and temporary, thus the mitigations embedded in this
4 project will adequately attenuate such impacts, real, or imagined.” (AR at 148.)
5

6 Similarly, the THP dismissed impacts to Castle Crags State Park by stating that visitor use is
7 declining and most visitors do not hike. The THP stated that the canopy within the park will
8 screen the locations “where substantial gaps occur in the canopy.” (AR at 150.) The THP
9 likewise stated that “no formal written correspondences [were] received regarding visual
10 concerns over Clear cuts adjacent to the I-5 corridor in the assessment area.” (AR at 151.)
11 However, the review team questions indicated that verbal concerns over visual impacts to riders
12 on I-5 were raised. (AR at 331.)
13

14
15 Upon receipt of the THP, CAL FIRE initiated preharvest inspection and generated review
16 team questions in September, 2006. Specifically, CAL FIRE requested that the THP explain
17 how visual impacts from Unit 102 would be mitigated to reduce the potential significant adverse
18 visual impact on travelers on I-5 and on visitors to Castle Crags State Park, noting that the THP
19 had not yet adequately mitigated the impacts with the proposed retention of two leave trees per
20 acre on the proposed retention area. (AR at 306-307.) In its response, the THP did not change or
21 increase the mitigations as requested by CAL FIRE, but instead concluded that the existing
22 mitigations reduced the “potentially significant impact” to “less than significant impact.” (AR at
23 307.) The THP concluded that the review team statement that the upper clear cut units might be
24 seen as substantially degrading the visual resources within Castle Crags State Park “is
25 speculative.” (AR at 309.) Finally, CAL FIRE requested additional and sufficient information to
26 be submitted to evaluate potential significant visual impacts. (AR at 309.) The THP did not
27
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1 propose additional mitigation but did amend the discussion in the visual resources cumulative
2 impacts assessment. (AR at 309.) However, this amendment did not include additional evidence
3 to support the position that the proposed mitigation in the THP was adequate.
4

5 CAL FIRE again identified the potential of the THP to create significant visual impacts in
6 a December, 2006 letter to Roseburg. (AR at 417-425.) CAL FIRE specifically disagreed with
7 the previous THP response that visual impacts had been reduced to less than significant. (AR at
8 419.) CAL FIRE also noted that CAL FIRE's additional review had revealed that no additional
9 mitigation measures had been included to address impacts on the state park. (AR at 419.) CAL
10 FIRE also criticized the THP's conclusion that the proposed leave trees would adequately
11 mitigate visual impacts and that views from the park to the clear cut were screened, noting that
12 the angle at which unit 102 is viewed becomes "more direct" along the trail to the Castle Crags
13 State Park. CAL FIRE concluded that the analysis of the potential impacts was inadequate and
14 that the mitigations as proposed did not adequately mitigate visual impacts. (AR at 421.) CAL
15 FIRE specifically proposed additional mitigation, which had been previously accepted by
16 another timberland owner and which provided adequate mitigation for visual impacts. Roseburg
17 declined to adopt those mitigations. (AR at 328-329.)
18
19

20 CAL FIRE conducted yet another review on the THP, resulting in an April, 2007 letter.
21 Additionally, State Parks, through its park ecologist, specifically addressed the proposed
22 mitigations for visual impacts, suggesting that additional trees should be left on Unit 102 as
23 Roseburg "did not address our concerns regarding visual impacts." (AR at 431.) CAL FIRE
24 informed Roseburg that CAL FIRE was waiting for Parks' comments on Roseburg's response to
25 Parks' original review questions. (AR at 450.) Parks again responded that Unit 102, as
26 proposed, would have significant visual impacts on park visitors. (AR at 456.)
27
28

1 In July, 2007 CAL FIRE's staff determined that the THP was not in conformance with
2 the FPR's and recommended that the THP be disapproved. On August 2, 2007, CAL FIRE sent
3 a letter to Roseburg officially disapproving the THP for nonconformance with the FPR's,
4 specifically for failure to mitigate visual impacts. (AR at 543-544.) In its Official Response
5 ("OR") to comments, CAL FIRE found that Unit 102 created the potential for a significant visual
6 impact, documenting the numerous times concerns over visual impacts had been raised to
7 Roseburg and documenting CAL FIRE's repeated suggestions for additional mitigations. The
8 OR noted that Roseburg declined to adopt any of these proposed mitigations, instead asserting
9 that no significant visual impact would occur. (AR at 551-552.)
10
11

12 III. STANDARD OF REVIEW

13
14 In any review of an administrative decision, the threshold question for the reviewing
15 body is the applicable standard of review. Here, the decision under review is the denial of a
16 THP, which is an administrative decision made by CAL FIRE and reviewable by the Board
17 pursuant to Public Resources Code "PRC" §4582.7 and FPR §1054.8. Both PRC §4582.7 and
18 FPR §1054.8 state that the Board must decide whether the THP is "in conformance with the rules
19 and regulations of the board and of this chapter."
20

21 However, this is only the beginning of the standard of review analysis for disapproval of
22 a THP. The California Environmental Quality Act "CEQA" allows the Secretary of Resources
23 to "certify" certain environmental regulatory programs as "functional equivalents" to
24 environmental impact reports "EIRs" pursuant to PRC §21080.5. The THP program has been
25 certified as being functionally equivalent to an EIR. As such, a THP is an equivalent document
26 to an EIR for purposes of analysis under the CEQA. Thus, review of a THP denial, just like
27 review of a THP approval is subject to the provisions of CEQA, including its standard of review.
28

1 PRC §21168 governs the review of an agency decision where by law a hearing is
2 required to be given, evidence is required to be taken, and discretion is vested in the public
3 agency. In those cases, review is limited to whether the challenged decision is based upon
4 substantial evidence. In all other cases, where a public agency makes a decision in which a
5 public hearing is not required, PRC §21168.5 limits review to whether a prejudicial abuse of
6 discretion existed. The reviewing body will find an abuse of discretion where the agency did not
7 proceed in the manner required by law or if the decision was not supported by substantial
8 evidence. (PRC §21168.5.)
9
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11 Here, no public hearing was required, although evidence was required to be taken. Thus,
12 PRC §21168.5 applies. However, the California Supreme Court has opined that the standard of
13 review in PRC §21168 and PRC §21168.5 is essentially the same. (Laurel Heights Improvement
14 Association v. Regents of the University of California (1988) 47 Cal.3d 376, 392 fn 5.) Likewise
15 in another THP case, the appellate court stated that there is “no practical difference between the
16 standards of review.” (Friends of the Old Trees v. Department of Forestry and Fire Protection (1st
17 Dist. 1997) 52 Cal.App.4th 1383, 1389.) These standards essentially repeat the standard for
18 administrative mandamus found in California Code of Civil Procedure (“CCP”) §1094.5.
19

20 Roseburg does not argue that CAL FIRE abused its discretion in failing to proceed as
21 required by law. Moreover, even if Roseburg had raised such an argument, both California court
22 decisions and PRC sections 21168 and 21168.5 require that even when an abuse of discretion is
23 alleged, the abuse must be reviewed by determining if substantial evidence supported the
24 challenged decision. Here, the Board must determine whether substantial evidence supported
25 CAL FIRE’s determination that the THP might result in significant visual impacts unless the
26 THP incorporated additional mitigation measures.
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1 California courts have further defined the standards a reviewing agency or court must
2 apply. In Laurel Heights, the Court ruled that “a court may not set aside an agency’s approval of
3 an EIR on the ground that an opposite conclusion would have been equally or more reasonable.”
4 (Laurel Heights, 47 Cal.3d at 393.) The Court continued: “A court’s task is not to weigh
5 conflicting evidence and determine who has the better argument when the dispute is whether
6 adverse effects have been mitigated or could have been better mitigated.” (Id.) Finally, the
7 standard of review under either PRC §21168 or §21168.5 “does not permit the reviewing court to
8 make its own factual findings.” (Burbank-Glendale-Pasadena Airport Authority v. Hensler (2d
9 Dist. 1992) 233 Cal.App.3d 577, 590.) Thus, while the Board reviews the administrative record
10 “de novo” and is not bound by the decision made by CAL FIRE, the Board must ground its own
11 decision on the evidence in the record and is limited to determining whether CAL FIRE based its
12 decision to disapprove the Blacktail THP on substantial evidence in the record. As the court
13 ruled in Friends of the Old Trees, the reviewing agency does not review the underlying decision
14 maker’s findings or conclusions, but redefines and evaluates the record. (Friends of the Old
15 Trees, 52 Cal.App.4th at 1393.)

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19 The standard of review for admission of extrinsic or “extra record” evidence is also found
20 in CCP §1094.5(e). This section allows a court to admit evidence if “relevant evidence that, in
21 the exercise of reasonable diligence, could not have been produced or was improperly excluded
22 at the hearing before respondent.” The California Supreme Court has construed this exception
23 very narrowly, ruling that in both CCP §1094.5 and PRC §21168.5, extra record evidence “is
24 admissible under this exception only in those rare instances in which (1) the evidence in question
25 existed *before* the agency made its decision, and (2) it was not possible in the exercise of
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1 reasonable diligence to present this evidence to the agency *before* the decision was made.”

2 (Western States Petroleum Association, 9 Cal.4th at 578.)

3
4 Here, Roseburg clearly had the ability to videotape its proposed harvest units during the
5 eleven months the THP was under consideration by CAL FIRE. However, Roseburg did not
6 exercise reasonable diligence to present this video evidence to CAL FIRE or any other member
7 of the public or responsible agencies that might have wanted to consider such evidence.

8 Roseburg’s contention that the videotape is “demonstrative evidence” is telling – Roseburg
9 concedes the tape is “evidence.” Demonstrative evidence is available in a trial where a jury
10 makes decisions on facts. Here, facts are not at issue, they are either contained in the
11 administrative record or not.

12
13 The appeal hearing is a hearing based upon the evidence contained in the record and
14 nothing more. As the Western States Court commented, “a broader exception would permit a
15 party to develop evidence post decision in order to rebut an unfavorable decision, thus forcing an
16 agency to revisit issues over and over again. The Friends of the Old Trees court opined that the
17 Western States Court’s primary concern was to restrain a reviewing court, or a reviewing Board,
18 from engaging in independent fact finding rather than engaging in a review of the agency’s
19 discretionary decision. (Friends of the Old Trees, 52 Cal.App.4th at 1391.) PRC §21168.5 is a
20 “highly deferential” substantial evidence standard not a “de novo” standard. (Id.) Unlike a
21 board of supervisors’ review of a planning commission decision which is a de novo hearing at
22 which new evidence may be introduced, here, the FPA and the FPRs explicitly limit the review
23 to the administrative record before CAL FIRE at the time the THP decision was made.
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1 **IV. ARGUMENT**

2 **A. Consistency with existing zoning does not mean the THP will not have significant**
3 **impacts on visual resources.**
4

5
6 Roseburg grounds most of its argument against CAL FIRE’s disapproval of the THP on
7 the fact that the THP lies on land zoned timber production zone “TPZ”. This argument is
8 ineffective. California courts have consistently ruled that consistency with adopted general plans
9 or zoning ordinances does not mean the effects of a project may not be significant. (City of
10 Antioch v. City Council of the City of Pittsburg (1st Dist. 1986) 187 Cal.App.3d 1325, 1331-
11 1332.) Likewise, simply because Castle Crags State Park is not specifically identified as a
12 Special Treatment Area pursuant to FPR Technical Rule Addendum No. 2 Appendix E (1), does
13 not mean the THP may not significantly adversely impact visual resources in the park. Courts
14 deciding CEQA cases have time and again balanced consistency with existing zoning or general
15 plans with the evidence in an administrative record which indicates the possibility of a potential
16 significant effect.
17

18
19 In Oro Fino Gold Mining Corporation v. County of El Dorado (3rd Dist. 1990) 225
20 Cal.App.3d 872, 884, the court invalidated a negative declaration where the County of El Dorado
21 relied substantially upon general plan consistency to approve a gold mining project despite
22 complaints of noise impacts. The County relied upon the project proponent’s assertion that the
23 project would not exceed County noise standards. While the County planning department
24 testified that it was not made aware of noise complaints, the record reflected that noise
25 complaints were made. (Id.) Similarly, here Roseburg asserted that no impacts to views from I-
26 5 would occur because no written complaints were received by them. However, the record
27 reflects that CAL FIRE review team staff had received several complaints over the years.
28

1 Likewise, in Gentry v. City of Murrieta (4th Dist. 1995) 36 Cal.App.4th 1359, 1415,
2 consistency with a Land Use Plan did not mitigate potential traffic impacts to a level of
3 insignificance. In Environmental Planning & Information Council v. County of El Dorado (3rd
4 Dist. 1982) the court ruled, “CEQA nowhere calls for evaluation of the impacts of a proposed
5 plan on an existing general plan; it concerns itself with the impacts of a project on the
6 environment, defined as the existing physical conditions in the affected area.” (Id. at 1416.)
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10 **B. The requirement to achieve maximum sustained yield does not eliminate the**
11 **requirement to preserve aesthetic values.**
12

13 By placing emphasis on the requirements to achieve maximum sustained yield and the
14 conformance with zoning, Roseburg seeks to minimize or ignore the legislative purpose stated in
15 PRC §4512(b) which states:
16

17 “The Legislature further finds and declares that the forest resources and
18 timberlands of the state furnish high-quality timber, recreational opportunities
19 and *aesthetic enjoyment* while providing watershed protection and maintaining
20 fisheries and wildlife.” (Emphasis added.)
21

22 Thus, aesthetic enjoyment is balanced equally with the need to furnish high quality timber.

23 Aesthetic values do not occupy a lesser status when land is zoned TPZ. Similarly, maximum
24 sustained production is also balanced while “giving consideration to values relating to recreation,
25 watershed, wildlife, range and forage, fisheries, regional economic vitality, employment and
26 aesthetic enjoyment.” (PRC §4513(b).)
27
28

1 Here, Roseburg consistently minimized the potential impacts to visual resources in its
2 THP, failing to even identify Castle Crags State Park or I-5 in its project description, despite the
3 close proximity of both to the proposed THP clear cut units. (AR at 85.) Roseburg did not list
4 State Parks as a contact in the THP and did not contact State Parks when it conducted its public
5 outreach meetings. (AR at 104-107.) Roseburg downplayed complaints by drivers on I-5 by
6 stating that no written complaints were received, ignoring CAL FIRE staff's observations that
7 complaints had been received historically over clear cuts visible along the I-5 corridor. (AR at
8 331.) This approach demonstrates a disregard for the requirements of CEQA, the FPA, and the
9 FPRs to evaluate and balance aesthetic impacts such as visual impacts against timber harvest.
10 The record reflects that feasible mitigation measures were suggested by CAL FIRE and State
11 Parks several times but Roseburg consistently declined to adopt any of them.

12
13
14 Roseburg also fails to identify potential significant impacts to aesthetic resources as
15 defined in the Environmental Checklist form found at Appendix G of the CEQA Guidelines,
16 California Code of Regulations, Title 14, Chapter 3. Roseburg relies only upon the analysis of
17 visual impacts found in the FPR at Appendix Technical Rule Addendum No. 2 which sets out
18 three separate criteria for evaluating potential significant visual impacts. However, even this
19 reliance lacks substance. Addendum No. 2 first identifies a visual assessment area which is an
20 area that is readily visible to significant numbers of people who are no farther than three miles
21 from the logging area. Here, both Castle Crags State Park and I-5 are within three miles - they
22 are both within one mile. (AR at 137.) Both have significant numbers of people to whom the
23 clear cut units, especially Unit 102, will be readily visible. (AR at 150-151.)

24
25
26 The rule then requires the THP to identify any Special Treatment Areas, areas designated
27 by the Board as having visual values. No Special Treatment Areas are identified in this THP.
28

1 The THP must then determine how far the proposed timber operation is from the nearest point
2 that significant numbers of people will see the timber operations. In this case, Unit 102 is within
3 .08 mile of Castle Craggs State Park and is clearly visible from several points within the park.
4
5 The rule acknowledges that significant impacts may exist within three miles as it states that at
6 distances greater than three miles, impacts “will be less significant.” Last, the THP must
7 determine how the people identified in the first two steps will view the timber operations, from a
8 car, on foot, or some other stationary viewing point. The rule does not require a Special
9 Treatment Area in order to find a potential significant impact on visual resources. The rule
10 establishes three factors which contribute to a finding of a potential significant impact.
11

12 The CEQA Guidelines also identify situations in which significant impacts may occur.
13 The Guidelines ask whether the project would have a substantial adverse impact on a scenic
14 vista. Would the project substantially damage scenic resources including but not limited to trees,
15 rock outcroppings and historic buildings within a state scenic highway? Would the project
16 substantially degrade the existing visual character or quality of the site and its surroundings?
17 (Appendix G.) Here, the record reflects that the project will have a substantial impact on the
18 vistas from Castle Craggs State Park and I-5. While I-5 is not identified as a scenic highway, the
19 views have been identified in the record as scenic and complaints about the appearance of clear
20 cuts against the slopes opposite the highway have been received over several years. Additionally,
21 evidence in the record shows that, unless further mitigated, the clear cut unit known as Unit 102
22 will substantially degrade the views from the state park and I-5.
23
24

25 In Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (4th Dist. 1994) 29 Cal.
26 App. 4th 1597, 1604, the court specifically ruled that a substantial, negative aesthetic effect is to
27 be considered a significant effect for CEQA purposes. The court stated,
28

1 “Yet, we do not judge compliance based on how many changes were made
2 from the original proposal, but rather on the status of the proposed subdivision
3 at the time of approval by the City together with any specific mitigation
4 measures adopted by the City at that time.” (Id. at 1605.)
5

6 Here, Roseburg failed to recognize the significant adverse visual impact that Unit 102 would
7 likely have on both visitors to Castle Crags State Park and to travelers on the I-5 corridor.
8 Likewise, Roseburg declined to adopt suggested feasible mitigation measures to avoid this
9 potential significant impact.
10

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13 **C. The Director must disapprove a THP that does not incorporate feasible silvicultural**
14 **systems, operating methods and procedures that will substantially lessen significant**
15 **impacts on the environment.**
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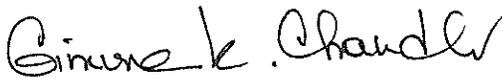
17 Over the course of eleven months, CAL FIRE consistently suggested additional
18 mitigation measures to reduce the potential for substantial adverse visual impacts to less than
19 significant. Each time those additional mitigation measures were proposed, Roseburg declined
20 to adopt them. Furthermore, each time CAL FIRE asked for additional evidence to demonstrate
21 that significant impacts to visual resources would not occur, Roseburg failed to provide that
22 additional evidence. The record reflects a consistent effort by Roseburg to minimize the
23 potential visual impacts, not by feasible and tangible mitigation measures, but by rhetoric and
24 conclusory statements. The administrative record contains ample evidence of the potential for
25 significant adverse impacts to the viewsheds from Castle Crags State Park and I-5. What the
26 record lacks is a good faith attempt by Roseburg to address those potential impacts. Because the
27 Blacktail THP fails to adopt feasible mitigation measures which include a modification in
28

1 harvesting method on only 19 acres out of 209 acres of proposed clear cut, the rules require the
2 Director to disapprove the THP. (FPR 898.1(c)(1). Here CAL FIRE correctly disapproved the
3 Blacktail THP for its failure to incorporate mitigation measures, including a modification of
4 harvesting technique, on one 19 acre clear cut unit, in order to avoid a potential significant
5 adverse visual impact.
6

7
8 V. CONCLUSION

9
10 For the reasons stated above, CAL FIRE respectfully requests that the Board uphold the
11 Director's determination that the Blacktail THP is not consistent with the rules and regulations of
12 the Board. The administrative record contains substantial evidence demonstrating that the
13 Blacktail THP failed to incorporate feasible mitigation measures which would lessen potential
14 visual impacts to a level of insignificance. Finally, CAL FIRE requests that the Board exclude
15 any extrinsic evidence not found in the administrative record, specifically the videotape
16 referenced by Roseburg at the hearing on December 6, 2007.
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22 Submitted by:

23 

24
25 GINEVRA K. CHANDLER

26 Chief Counsel

27 California Department of Forestry and Fire Protection
28